

coming year. If actual disbursements during the preceding year are used as the basis, the resulting estimate may deviate from those disbursements by as much as ten percent. The mortgagee may not require withholding in excess of the current estimated total annual requirement, unless expressly requested by the mortgagor. Each monthly withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(f) *Set aside for first year property charges.* If the mortgagor elects to require the mortgagee to pay property charges and to receive payments under the term or tenure payment option, then the mortgagee shall set aside at closing a portion of the principal limit that will be sufficient to pay such items for the period beginning in the last date on which each such charge would have been paid under the normal lending practices of the mortgagee and local custom (if each such date constitutes prudent lending practice), and ending in the due date of the first monthly payment to the mortgagor.

[54 FR 24833, June 9, 1989; 54 FR 32060, Aug. 4, 1989, as amended at 60 FR 42762, Aug. 16, 1995]

§206.207 Allowable charges and fees after endorsement.

(a) *Reasonable and customary charges.* The mortgagee may collect reasonable and customary charges and fees from the mortgagor after insurance endorsement by adding them to the mortgage balance, but only for: items listed in §203.552(a)(6), (9), (11), (13) and (14) of this chapter; items authorized by the Secretary under §203.552(a)(12) of this chapter, or as provided at §206.26(d); or charges and fees related to additional documents described in §206.27(b)(10) and related title search costs.

(b) *Servicing charges.* The mortgagee may collect a fixed monthly charge for servicing activities of the mortgagee or servicer if (1) the charge is authorized by the Secretary, (2) the charge is disclosed as required by §206.43 to the mortgagor in a manner acceptable to the Secretary at the time the mortgagee provides the mortgagor with a loan application, (3) amounts to pay the charge are set aside as a portion of

the principal limit, and (4) the charge is payable only from the set aside.

[54 FR 24833, June 9, 1989, as amended at 60 FR 42762, Aug. 16, 1995]

§206.209 Prepayment.

(a) *No charge or penalty.* The mortgagor may prepay a mortgage in full or in part without charge or penalty at any time, regardless of any limitations on prepayment stated in a mortgage.

(b) *Insurance and condemnation proceeds.* If insurance or condemnation proceeds are paid to the mortgagee, the principal limit and the mortgage balance shall be reduced by the amount of the proceeds not applied to restoration or repair of the damaged property.

[61 FR 49034, Sept. 17, 1996]

§206.211 Annual determination of principal residence.

At least once during each calendar year, the mortgagee shall determine whether or not the property is the principal residence of at least one mortgagor. The mortgagee shall require each mortgagor to make an annual certification of his or her principal residence, and the mortgagee may rely on the certification unless it has information indicating that the certification may be false.

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

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AUTHORITY: 12 U.S.C. 1701z-11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

SOURCE: 36 FR 24537, Dec. 22, 1971, unless otherwise noted.

Subpart A—Eligibility Requirements

§207.1 Eligibility requirements.

The eligibility requirements set forth in 24 CFR part 200, subpart A, apply to multifamily project mortgages insured under section 207 of the National Housing Act (12 U.S.C. 1713), as amended.

[61 FR 14405, Apr. 1, 1996]

Subpart B—Contract Rights and Obligations

§207.251 Definitions.

As used in this subpart:

(a) The term *Commissioner* means the Federal Housing Commissioner.

(b) The term *act* means the National Housing Act, as amended.

(c) The term *mortgage* means such a first lien upon real estate and other property as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the State, district or territory in which the real estate is located, together with the credit instrument or instruments, if any, secured thereby. In any instance where an operating loss loan is involved, the term shall in-

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clude both the original mortgage and the instrument securing the operating loss loan.

(d) The term *insured mortgage* means a mortgage which has been insured by the endorsement of the credit instrument by the Commissioner, or his duly authorized representative.

(e) The term *contract of insurance* means the agreement evidenced by such endorsement and includes the terms, conditions and provisions of this part and of the National Housing Act.

(f) The term *mortgagor* means the original borrower under a mortgage and its successors and such of its assigns as are approved by the Commissioner.

(g) The term *mortgagee* means the original lender under a mortgage its successors and such of its assigns as are approved by the Commissioner, and includes the holders of the credit instruments issued under a trust indenture, mortgage or deed of trust pursuant to which such holders act by and through a trustee therein named.

PREMIUMS

§207.252 First, second and third premiums.

The mortgagee, upon the initial endorsement of the mortgage for insurance, shall pay to the Commissioner a first mortgage insurance premium equal to one-half of one percent of the original face amount of the mortgage.

(a) If the date of the first principal payment is more than one year following the date of such initial insurance endorsement, the mortgagee, upon the anniversary of such insurance date, shall pay a second premium equal to one-half of one percent of the original face amount of the mortgage. On the date of the first principal payment, the mortgagee shall pay a third premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said three premiums shall equal the sum of:

(1) One percent of the average outstanding principal obligation of the mortgage for the year following the date of initial insurance endorsement

and (2) one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the first anniversary of the date of initial insurance endorsement to one year following the date of the first principal payment.

(b) If the date of the first principal payment is one year, or less than one year following the date of such initial insurance endorsement, the mortgagee, upon such first principal payment date, shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the following year which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of:

(1) One percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of initial insurance endorsement to the date of first principal payment and (2) one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date of the first principal payment.

(c) Where the credit instrument is initially and finally endorsed for insurance pursuant to a Commitment to Insure Upon Completion, the mortgagee on the date of the first principal payment shall pay a second premium equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted so as to accord with such date and so that the aggregate of the said two premiums shall equal the sum of one-half of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(d) Until the mortgage is paid in full, or until receipt by the Commissioner of an application for insurance benefits, or until the contract of insurance is otherwise terminated with the consent of the Commissioner, the mortgagee, on each anniversary of the date of the first principal payment, shall pay an annual mortgage insurance premium

equal to one-half of one percent of the average outstanding principal obligation of the mortgage for the year following the date on which such premium becomes payable.

(e) The premiums payable on and after the date of the first principal payment shall be calculated in accordance with the amortization provisions without taking into account delinquent payments or prepayments.

(f) Premiums shall be payable in cash or in debentures at par plus accrued interest. All premiums are payable in advance and no refund can be made of any portion thereof except as herein-after provided in this subpart.

§ 207.252a Premiums—operating loss loans.

(a) The mortgagee, upon the insurance endorsement of the increase loan credit instrument covering the operating loss loan, shall pay to the Commissioner a first mortgage insurance premium of one-half of 1 percent of the original amount of the loan.

(b) The provisions of paragraphs (d), (e), and (f) of § 207.252 shall apply to operating loss loans.

§ 207.252b Premiums—mortgages insured pursuant to section 223(f) of the Act.

(a) The mortgagee, upon the initial-final endorsement of the mortgage for insurance pursuant to a Commitment to Insure Upon Completion issued in accordance with § 207.32a, shall pay to the Commissioner a first mortgage insurance premium equal to one percent of the original face amount of the mortgage.

(b) The mortgagee, on the date of the first principal payment, shall pay a second premium equal to one percent of the average outstanding principal obligation of the mortgage for the year following such first principal payment date which shall be adjusted as of that date so that the aggregate of the first and second premiums shall equal the sum of one percent per annum of the average outstanding principal obligation of the mortgage for the period from the date of the insurance endorsement to one year following the date of the first principal payment.

(c) The provisions of paragraphs (d), (e) and (f) of § 207.252 shall apply to mortgages insured pursuant to section 223(f) of the Act.

[40 FR 10177, Mar. 5, 1975]

§ 207.252c Premiums—mortgages insured pursuant to section 238(c) of the Act.

All of the provisions of §§ 207.252 and 207.252a governing mortgage insurance premiums shall apply to mortgages insured under this subpart pursuant to section 238(c) of the Act except that all mortgage insurance premiums due on such mortgages in accordance with §§ 207.252 and 207.252a shall be calculated on the basis of one percent.

[42 FR 59674, Nov. 18, 1977]

§ 207.252d Mortgagee's late charge.

Mortgage insurance premiums which are paid to the Commissioner more than 15 days after the billing date or due date, whichever is later, shall include a late charge of 4 percent of the amount of the payment due, except that no late charge shall be required with respect to any case for which HUD fails to render a proper billing to the mortgagee.

[43 FR 60154, Dec. 26, 1978. Correctly designated at 44 FR 23067, Apr. 18, 1979]

§ 207.252e Method of payment of mortgage insurance premiums.

In the cases that the Commissioner deems appropriate, the Commissioner may require, by means of instructions communicated to all affected mortgagees, that mortgage insurance premiums be remitted electronically.

[63 FR 1303, Jan. 8, 1998]

§ 207.253 Termination by prepayment and voluntary termination.

All rights under the insurance contract and all obligations to pay future insurance premiums shall terminate on the following conditions:

(a) *Termination by prepayment.* Notice of the prepayment in full of the mortgage or loan shall be given to the Commissioner, on a form prescribed by the Commissioner, within 30 days from the date of prepayment. The insurance contract shall terminate, effective as of the date of prepayment. No adjusted

premium charge shall be due the Commissioner on account of such termination by prepayment.

(b) *Termination by voluntary agreement.* Receipt by the Commissioner of a written request, by the mortgagor and mortgagee or lender for termination of the insurance on the mortgage or loan, on a form prescribed by the Commissioner, accompanied by the original credit instrument for cancellation of the insurance endorsement and the remittance of all sums to which the Commissioner is entitled. The termination shall become effective as of the date these requirements are met. No voluntary termination charge shall be due the Commissioner on account of such termination by voluntary agreement.

(c) Upon termination of the mortgage or loan insurance contract by a payment in full or by a voluntary termination, the Commissioner shall refund to the mortgagee or lender for the account of the mortgagor or borrower an amount equal to the pro rata portion of the current annual mortgage insurance premium theretofore paid, which is applicable to the portion of the year subsequent to (1) the date of the prepayment or (2) the effective date of the voluntary termination of the contract of insurance.

(d) Notwithstanding any provision in the mortgage instrument, this section shall apply to all mortgage or loan insurance contracts terminated by either prepayment or voluntary termination where: (1) The mortgage is prepaid in full or (2) the Commissioner receives a request for voluntary termination, on or after May 1, 1972.

[37 FR 8662, Apr. 29, 1972]

§ 207.253a Termination of insurance contract.

(a) *Reason for termination.* The happening of any of the following events shall constitute an additional reason for terminating the contract of insurance in cases where the mortgagee has elected to convey the property to the Commissioner:

(1) The acquisition by the mortgagee of the mortgaged property without conveying it to the Commissioner.

(2) The acquisition of the property at the foreclosure sale by a party other than the mortgagee.

(3) The redemption of the property after foreclosure.

(4) Notice given by the mortgagee after the foreclosure and during the redemption period that it will not tender the property to the Commissioner.

(b) *Notice of termination.* No contract of insurance shall be terminated until the mortgagee has given written notice thereof to the Commissioner within 30 days from the happening of any one of the events set forth in paragraph (a) of this section.

(c) *Effective termination date.* The Commissioner shall notify the mortgagee that the contract of insurance has been terminated and the effective termination date. The termination shall be effective as of the date any one of the events set forth in paragraph (a) of this section occur.

(d) *Effect of termination.* Upon termination of the contract of insurance the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated.

[36 FR 24537, Dec. 22, 1971, as amended at 37 FR 8662, Apr. 29, 1972]

RIGHTS AND DUTIES OF MORTGAGEE UNDER THE CONTRACT OF INSURANCE

§ 207.255 Defaults.

(a) The following shall be considered a default under the terms of a mortgage insured under this subpart:

(1) Failure of the mortgagor to make any payment due under the mortgage; or

(2) Failure to perform any other covenant under the provisions of the mortgage, if the mortgagee, because of such failure, has accelerated the debt.

(b) In the case of an operating loss loan, the failure of the mortgagor to make any payment due under such loan or under the original mortgage shall be considered a default under both the loan and original mortgage.

(c) If such defaults as defined in paragraphs (a) and (b) of this section continue for a period of 30 days the mortgagee shall be entitled to receive the benefits of the insurance hereinafter provided.

(d) For the purposes of this section the date of default shall be considered as:

(1) The date of the first uncorrected failure to perform a covenant or obligation; or

(2) The date of the first failure to make a monthly payment which subsequent payments by the mortgagor are insufficient to cover when applied to the overdue monthly payments in the order in which they became due.

§ 207.256 Notice.

(a) If the default as defined in § 207.255 is not cured within the 30 days grace period, the mortgagee must, within 30 days thereafter, notify the Commissioner of such default, in the manner prescribed in 24 CFR part 200, subpart B.

(b) Notwithstanding § 207.255(a)(2), the mortgagee must give notice to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of the failure of the mortgagor to comply with such covenant, regardless of the fact the mortgagee may not have elected to accelerate the debt.

[64 FR 4769, Jan. 29, 1999]

§ 207.256a Reinstatement of defaulted mortgage.

If, after default and prior to the completion of foreclosure proceedings, the mortgagor cures the default, the insurance shall continue as if a default had not occurred, provided the mortgagee gives notice of reinstatement to the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B.

[64 FR 4770, Jan. 29, 1999]

§ 207.256b Modification of mortgage terms.

(a) The mortgagor and the mortgagee may, with the approval of the Commissioner, enter into an agreement which extends the time for curing a default under the mortgage or modifies the payment terms of the mortgage.

(b) The Commissioner's approval of the type of agreement specified in paragraph (a) of this section shall not be given unless the mortgagor agrees in writing that, during such period as payments to the mortgagee are less than the amounts required under the terms of the original mortgage, it will hold in trust for disposition as directed by the Commissioner all rents or other

funds derived from the property which are not required to meet actual and necessary expenses arising in connection with the operation of such property, including amortization charges under the mortgage.

(c) The Commissioner may exempt a mortgagor from the requirement of paragraph (b) of this section in any case where the Commissioner determines that such exemption does not jeopardize the interests of the United States.

§ 207.257 Commissioner's right to require acceleration.

Upon receipt of notice of violation of a covenant, as provided for in § 207.256(b), or otherwise being appraised thereof, the Commissioner reserves the right to require the mortgagee to accelerate payment of the outstanding principal balance due in order to protect the interests of the Federal Housing Commissioner.

§ 207.258 Insurance claim requirements.

(a) *Alternative election by mortgagee.* When the mortgagee becomes eligible to receive mortgage insurance benefits pursuant to § 207.255(c), it must, within 45 days thereafter, give the Commissioner notice, in the manner prescribed in 24 CFR part 200, subpart B, of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in paragraph (b) of this section, or to acquire and convey title to the Commissioner, as provided in paragraph (c) of this section.

(b) *Assignment of mortgage to Commissioner.* If the mortgagee elects to assign the mortgage to the Commissioner, it shall, at any time within 30 days after the date of the notice of the election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, the credit instrument(s) and the realty and chattel security instruments. The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under § 207.258b is being considered. The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the

Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a mortgagee accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the mortgagee's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner. The following requirements shall also be met by the mortgagee:

(1) *Notice of assignment.* On the date the assignment of the mortgage is filed for record, the mortgagee must notify the Commissioner, in the manner prescribed in 24 CFR part 200, subpart B, of such assignment, and must also notify the FHA Comptroller by telegram of such recordation.

(2) *Warranty of mortgagee.* The assignment shall be made without recourse or warranty, except that the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity and priority of the mortgage.

(ii) The mortgage is prior to all mechanics' and materialmen's liens filed on record subsequent to the recording of the mortgage, regardless of whether such liens attached prior to the recording date.

(iii) The mortgage is prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of the mortgage, except such liens or other matters as may be approved by the Commissioner.

(iv) The amount stated in the instrument of assignment is actually due under the mortgage and there are no offsets or counterclaims against such amount.

(v) The mortgagee has a good right to assign the mortgage.

(3) *Chattel lien warranty.* In assigning its security interest in chattels, including materials, located on the premises covered by the mortgage, or its security interest in building components stored either on-site or off-site at the time of the assignment, the mortgagee shall warrant that:

(i) No act or omission of the mortgagee has impaired the validity or priority of the lien created by the chattel security instruments; and

(ii) The mortgagee has a good right to assign the security instruments; and

(iii) The chattel security instruments are a first lien on the items covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

(4) *Items delivered by mortgagee.* The mortgagee shall deliver to the Commissioner, within 45 days after the assignment is filed for record, the items enumerated below:

(i) An assignment of all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction.

(ii) All policies of title or other insurance or surety bonds or other guarantees, and any and all claims thereunder, including evidence satisfactory to the Commissioner that the effective date of the original title coverage has been extended to include the assignment of the mortgage to the Commissioner.

(iii) All records, ledger cards, documents, books, papers, and accounts relating to the mortgage transaction.

(iv) All property of the mortgagor held by the mortgagee or to which it is entitled (other than the cash items which are to be retained by the mortgagee) pursuant to paragraph (b)(5) of this section.

(v) Any additional information or data which the Commissioner may require.

(5) *Disposition of cash items.* The following cash items shall either be retained by the mortgagee or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner at the time the insurance claim is filed:

(i) Any balance of the mortgage loan not advanced to the mortgagor.

(ii) Any cash held by the mortgagee or its agents or to which it is entitled, including deposits made for the account of the mortgagor, and which have not been applied in reduction of the principal of the mortgage indebtedness.

(iii) All funds held by the mortgagee for the account of the mortgagor received pursuant to any other agreement.

(iv) The amount of any undrawn balance under a letter of credit used in lieu of a cash deposit.

(c) *Conveyance of title to Commissioner.* If the mortgagee elects to acquire and convey title to the Commissioner, the following requirements shall be met:

(1) *Alternative actions by mortgagee.* At any time within a period of 30 days after the date of the notice of such election, the mortgagee shall take one of the alternative actions in paragraph (c) (2) or (3) of this section.

(2) *Foreclosure of mortgage.* The mortgagee may elect to commence foreclosure proceedings. If the laws of the State where the property is located do not permit institution of foreclosure within such 30-day period, foreclosure shall be commenced not less than 30 days after such action can be taken. Under such proceedings, the mortgagee shall take one of the following actions:

(i) Obtain possession of the mortgaged property and the income therefrom through the voluntary surrender thereof by the mortgagor.

(ii) Institute and prosecute with reasonable diligence, proceedings for the appointment of a receiver to manage the mortgaged property and collect income therefrom.

(iii) Proceed to exercise such other rights and remedies as may be available to it for the protection and preservation of the mortgaged property and to obtain the income therefrom under the mortgage and the law of the particular jurisdiction.

(iv) With the prior approval of the Commissioner, exercise the power of sale under a deed of trust.

(3) *Acquisition of title and possession.* The mortgagee, with the approval of the Commissioner, may elect to acquire possession of, and title to, the mortgaged property by means other than foreclosure. With the prior approval of the Commissioner, title may be transferred directly to the Commissioner.

(4) *Notice of foreclosure.* The mortgagee shall give written notice to the Commissioner within 30 days after the institution of foreclosure proceedings and shall exercise reasonable diligence in prosecuting such proceedings to completion. Any developments which might delay the consummation of such

proceedings shall be promptly reported to the Commissioner.

(5) *Transfer by mortgagee.* After acquiring title to and possession of the property, the mortgagee shall (within 30 days of such acquisition) transfer title and possession of the property to the Commissioner. The transfer shall be made in such manner as the Commissioner may require. On the date the deed is filed for record, the mortgagee shall notify the Commissioner on a form prescribed by him of the filing of such conveyance, and shall also notify the FHA Assistant Commissioner-Comptroller by telegram of such rec- ordation.

(6) *Filing of deed and application.* The mortgagee shall file its application for insurance benefits at the time of filing for record of the deed conveying the property to the Commissioner.

(7) *Deed covenants and documents.* The deed conveying the property to the Commissioner shall contain covenants satisfactory to the Commissioner. The original deed shall be forwarded to the Commissioner as soon as received from the recording authority. The following documents shall be forwarded with the deed:

(i) A bill of sale covering any personal property to which the mortgagee is entitled by reason of the mortgage transaction or by the acceptance of a deed in lieu of foreclosure.

(ii) An assignment of all claims of the mortgagee against the mortgagor or others arising out of the mortgage transaction and out of the foreclosure proceedings or other means by which the property was acquired.

(iii) An assignment of any claims on account of title insurance and fire or other hazard insurance, except claims which have been released with the prior approval of the Commissioner.

(8) *Title evidence.* Evidence of title, satisfactory to the Commissioner and meeting the requirements of § 207.258a shall be furnished to the Commissioner (without expense to him) within 45 days of the filing for record of the deed conveying the property to him.

(9) *Disposition of cash items.* The provisions of paragraph (b)(4) of this section, relating to the retention or delivery of cash items, shall be applicable to cases

involving the conveyance of property to the Commissioner.

(Information collection requirements in paragraph (b) were approved by the Office of Management and Budget under control number 2535-0061)

[36 FR 24537, Dec. 22, 1971, as amended at 44 FR 8195, Feb. 8, 1979; 50 FR 38786, Sept. 25, 1985; 51 FR 27838, Aug. 4, 1986; 64 FR 4770, Jan. 29, 1999]

§ 207.258a Title requirements.

(a) *Form of title evidence.* The title evidence submitted with a conveyance of the property to the Commissioner shall be in the form of an owner's policy of title insurance, except that, if an abstract and attorney's opinion were accepted by the Commissioner at the time of insurance, the title evidence may be in such form. The title evidence shall be effective on or after the date of the recording of the conveyance to the Commissioner.

(b) *Content of title evidence.* To be satisfactory to the Commissioner, the title evidence covering the property conveyed to him shall show the same title vested in the Commissioner as was vested in the mortgagor as of the date of the mortgage was filed for record, with the exception of such liens or other matters affecting the title as may be approved by the Commissioner.

§ 207.258b Partial payment of claim.

(a) Whenever the Commissioner receives notice under § 207.258 of a mortgagee's intention to file an insurance claim and to assign the mortgage to the Commissioner, the Commissioner may request the mortgagee, in lieu of assignment, to accept partial payment of the claim under the mortgage insurance contract and to recast the mortgage, under such terms and conditions as the Commissioner may determine.

(b) The Commissioner may request the mortgagee to participate in a partial payment of claim in lieu of assignment only after a determination that partial payment would be less costly to the Federal government than other reasonable alternatives for maintaining the low- and moderate-income

character of the project. This determination shall be based upon the findings listed below and such other findings as the Commissioner deems appropriate:

(1) The mortgagee is entitled, under § 207.255, to assign the mortgage in exchange for the payment of insurance benefits;

(2) The relief resulting from partial payment, when considered with other resources available to the project, would be sufficient to restore the financial viability of the project;

(3) The project is, or can at reasonable cost be made, structurally sound;

(4) The management of the project is satisfactory to the Commissioner; and

(5) The default under the insured mortgage was beyond the control of the mortgagor.

(c) Partial payment of a claim under this section shall be made only when:

(1) The project is, or potentially could serve as, a low- and moderate-income housing resource;

(2) The property covered by the mortgage is free and clear of all liens other than the insured first mortgage and such other liens as the Commissioner may have approved;

(3) The mortgagee has voluntarily agreed to accept partial payment of the insurance claim under the mortgage insurance contract and to recast the remaining mortgage amount under terms and conditions prescribed by the Commissioner; and

(4) The mortgagor has agreed to repay to the Commissioner an amount equal to the partial payment, with the obligation secured by a second mortgage on the project containing terms and conditions prescribed by the Commissioner. The terms of the second mortgage will be determined on a case-by-case basis to assure that the estimated project income will be sufficient to cover estimated operating expenses and debt service on the recast insured mortgage. The Commissioner may provide for postponed amortization of the second mortgage.

(d) Payment of insurance benefits under this section shall be in cash. The Commissioner shall waive the deduction of one percent of the mortgage funds advanced to the mortgagor, provided for in § 207.259(b)(2)(iv), with re-

spect to a partial payment of a claim under this section. The items referred to in § 207.258(b)(4) shall either be retained by the mortgagee or delivered to the Commissioner in accordance with instructions to be issued by the Commissioner with respect to a partial payment of claim under this section.

(e) Lenders receiving a partial payment of claim following the Commissioner's endorsement of the Mortgage for full insurance under parts 251, 252, or 255 of this chapter, will pay HUD a fee in an amount set forth through FEDERAL REGISTER notice. HUD, in its discretion, may collect this fee or deduct the fee from any payment it makes in the claim process.

[50 FR 38786, Sept. 25, 1985, as amended at 61 FR 49037, Sept. 17, 1996]

§ 207.259 Insurance benefits.

(a) *Method of payment.* Upon either an assignment of the mortgage to the Commissioner or a conveyance of the property to him in accordance with requirements in § 207.258, payment of an insurance claim shall be made in cash, in debentures, or in a combination of both, as determined by the Commissioner either at, or prior to, the time of payment, except where the mortgage is insured pursuant to:

(1) Section 223(e) of the National Housing Act, or

(2) Section 223(f) of the Act and at the time of the insurance endorsement, (i) the mortgage met the special eligibility requirements contained in § 207.32a(k) or (ii) the mortgage covered a property to be rehabilitated under part 511 or part 850 of this title, such claim shall be paid in cash, unless the mortgagee files a written request, with the application, for payment in debentures. A claim paid in cash on a mortgage insured under section 223(e) shall be paid from the Special Risk Insurance Fund. If the mortgagee files an application for payment in debentures on a claim on a mortgage insured under section 223(e) or 223(f), the claim shall be paid by issuing debentures and by paying any balance in cash.

(b) *Amount of payment; assignment of mortgage.* If the mortgage is assigned to the Commissioner, the insurance benefits shall be paid in an amount determined as follows:

(1) By adding to the unpaid principal amount of the mortgage, computed as of the date of default, the following items:

(i) The amount of all payments made by the mortgagee for taxes, special assessments and water rates which are liens prior to the mortgage; for insurance on the property; and for any mortgage insurance premiums paid after default.

(ii) An allowance for reasonable payments made by the mortgagee, with the approval of the Commissioner, for the completion and preservation of the property.

(iii) An amount equivalent to the debenture interest which would have been earned on the portion of the insurance benefits paid in cash, as of the date such cash payment is made, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 207.256 and 207.258 within the specified time and in a manner satisfactory to the Commissioner (or within such further time as the Commissioner may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended.

(2) By deducting from the total of the items computed under paragraph (b)(1) of this section, the following items:

(i) Any amount received by the mortgagee on account of the mortgage after the date of default.

(ii) Any net income received by the mortgagee from the property covered by the mortgage after the date of default.

(iii) The sum of the cash items retained by the mortgagee pursuant to § 207.258(b)(5), except the balance of the mortgage loan not advanced to the mortgagor.

(iv) An amount equivalent to 1 percent of the mortgage funds advanced to the mortgagor and not repaid as of the date of default, except that all or part of the 1 percent may be waived by the Commissioner if, at his request and in lieu of foreclosure, the mortgage is assigned to the Secretary.

(v) In the case of a lender receiving insurance benefits for the full Mortgage amount upon the Commissioner's

endorsement of the Mortgage for full insurance pursuant to 24 CFR parts 251, 252, or 255, the amount of the fee set forth through FEDERAL REGISTER notice. HUD may, in its discretion, collect this fee rather than deducting the fee from the total of the items computed under paragraph (b)(1) of this section.

(c) *Amount of payment; conveyance of property.* If the property is conveyed to the Commissioner, the insurance benefits shall be paid in an amount determined in accordance with paragraph (b) of this section, except that the item set forth in paragraph (b)(2)(iv) of this section shall not be deducted.

(d) *Issuance of certificate of claim.* In addition to the insurance benefits paid under paragraph (b) or (c) of this section, a certificate of claim shall be issued to the mortgagee.

(1) In the case of an assignment of the mortgage, the certificate shall be for an amount which the Commissioner determines to be sufficient, when added to the amount of the insurance benefits to equal the amount the mortgagee would have received if, on the date of assignment to the Commissioner, the mortgagor had paid in full all obligations under the mortgage. Where a conveyance is involved, there shall also be included in the certificate an allowance in a reasonable amount for any necessary expenses incurred by the mortgagee in connection with the foreclosure proceedings or the acquisition of the mortgaged property otherwise and in connection with the conveyance of the property to the Commissioner.

(2) The certificate of claim shall provide for an un compounded annual interest increment of 3 percent to begin as of the date of either assignment or conveyance.

(e) *Issuance of debentures.* Where debentures are issued, they shall meet the following requirements:

(1) Be issued as of the date of default.

(2) Be registered as to principal and interest.

(3) At the option of the Commissioner and with the approval of the Secretary of the Treasury, be redeemable at par plus accrued interest on any semi-annual interest payment date on 3 months' notice of redemption given in such manner as the Commissioner shall

prescribe. The debenture interest on the debentures called for redemption shall cease on the semiannual interest payment date designated in the call notice. The Commissioner may include with the notice of redemption an offer to purchase the debentures at par plus accrued interest at any time during the period between the notice of redemption and the redemption date. If the debentures are purchased by the Commissioner after such call and prior to the named redemption date, the debenture interest shall cease on the date of purchase.

(4) Mature 20 years from the date thereof.

(5) Be issued in such forms and amounts; and be subject to such terms and conditions; and include such provisions for redemption, if any, as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury; and may be in book entry or certificated registered form, or such other form as the Secretary by regulation may prescribe.

(6) Bear interest from the date of issue, payable semiannually on the first day of January and the first day of July of each year at the rate in effect as of the date the commitment was issued, or as of the date of initial insurance endorsement of the mortgage, whichever rate is higher. The applicable rates of interest will be published twice each year as a notice in the FEDERAL REGISTER.

(7) Debentures representing the portion of the claim applicable to an operating loss loan shall bear interest at the rate in effect as of the date the commitment to insure such loan was issued, or as of the date of endorsement for insurance of such loan, whichever rate is the higher, although debentures representing the portion of the claim applicable to the original mortgage may bear interest at a different rate.

[36 FR 24537, Dec. 22, 1971, as amended at 41 FR 45829, Oct. 18, 1976; 47 FR 26125, June 17, 1982; 49 FR 24654, June 14, 1984; 51 FR 13142, Apr. 17, 1986; 51 FR 27838, Aug. 4, 1986; 57 FR 55112, Nov. 24, 1992; 59 FR 49816, Sept. 30, 1994; 61 FR 49038, Sept. 17, 1996]

§ 207.259a Waiver of title objection; mortgages formerly Commissioner-held.

If the Commissioner sells a mortgage and such mortgage is later reassigned to him in exchange for debentures or the property covered by such mortgage is later conveyed to him in exchange for debentures, the Commissioner will not object to title by reason of any lien or other adverse interest that was senior to the mortgage on the date of the original sale of such mortgage by the Commissioner.

§ 207.260 Maintenance and inspection of property.

As long as the mortgage is insured or held by the Commissioner, the mortgagor must maintain the insured project in accordance with the physical condition requirements in 24 CFR part 5, subpart G; and the mortgagee must inspect the project in accordance with the physical inspection requirements in 24 CFR part 5, subpart G.

[63 FR 46578, Sept. 1, 1998]

RIGHTS IN HOUSING FUND

§ 207.263 Responsibility for servicing.

After January 10, 1994, servicing of insured mortgages must be performed by a mortgagee which is approved by HUD to service insured mortgages.

[57 FR 58350, Dec. 9, 1992]

AMENDMENTS

§ 207.499 Effect of amendments.

The regulations in this subpart may be amended by the Commissioner at any time and from time to time, in whole or in part, but such amendment shall not adversely affect the interests of a mortgagee or lender under the contract of insurance on any mortgage or loan already insured and shall not adversely affect the interests of a mortgagee or lender on any mortgage or loan to be insured on which the Commissioner has made a commitment to insure.